



National Housing
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Taking stock: how do we build energy efficient homes for the future

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The background of the slide is a green-tinted image of a cityscape. In the foreground, a large white geometric shape, resembling a folded piece of paper, is on the left side. The cityscape includes a prominent bridge with multiple arches over a body of water, and several tall buildings in the background under a cloudy sky.

Climate change, climate justice and rental regulation and reform

By Agata Wierzbowski, Director of Client Services, Tenants Victoria

Overview

- › Introduction – why talk about renters and climate change?
 - › What Victorian rental law changes relate to climate change?
 - › How are these working in practice?
 - › Case studies:
 - › Extreme heat
 - › Disasters
 - › What other laws are relevant?
 - › What could truly climate just housing look like?
 - › How could this be implemented?
 - › Questions?
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Why should we talk about renting and climate change?

- › 1. Scale - About 2.6M renting households in Australia – about one third of all households
 - › In Victoria, that was 57.8% of units, and 19.7% of houses
 - › In 2018, 71.8% of rental providers owned only 1 property
 - › 2. Renters' relative poverty and disadvantage
 - › About 46% of renters are 'lower income'. Many live with other disadvantages.
 - › Home ownership rates are falling – which means many people are renting, for longer.
 - › 3. Youth – renters are young – and they care about climate change
 - › The largest cohort of renters is aged 15-24 years (33% of renters), followed by 25-34 years of age, at about 27% of renters
 - › Young people are increasingly concerned about climate change.
 - › Most renters' greatest expense is housing.
 - › This cohort is interested in sustainable options – but there are few, particularly at the low end of the market.
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Case study – extreme heat in Mildura

The strains of extreme heat at home in Mildura

Mallee Family Care (MFC) provides social and health services in Mildura and other areas that experience extreme heat in summer.

During times of extreme heat, MFC staff see a spike in family violence, alcohol and drug use, police and ambulance call-outs, hospitalisation for mental illness and child protection notifications. They are particularly concerned about people living in low-quality public housing without air conditioning.

Some people with existing health conditions are more vulnerable to extreme heat; for example, people taking certain medication to manage serious mental ill-health are more sensitive to heat. A number of public housing properties still lack air conditioning. In some cases, people on medication have made significant efforts to have air conditioning installed, but their requests have been declined or delayed. Some people have been unable to live in their homes, or ended up in hospital.

In addition to the difficulties these people face personally, the time and effort that MFC staff and others spend on applications and advocacy detracts from the direct support they could otherwise give people.

MFC has partnered with the University of Sydney to study the negative impacts of extreme heat on the health and wellbeing of people in Mildura. They are focused on people in public housing who do not have air conditioning.

Victorian rental law reform

On 29 March 2021, Victoria implemented over 130 reforms to its *Residential Tenancies Act*. These included:

- › Minimum standards (s 65A, RTR r 29 and Schedule 4), which includes:
 - › Enforceable through streamlined ‘urgent repairs’ process
 - › Energy efficiency requirements for some appliances, where they are being replaced (s 69, RTR rr 23-24)
 - › If appliance energy efficiency requirements are not met, the landlord is liable to pay for supply of water, gas or electricity to the property until the appliance is compliant (s 54)
 - › Modifications – no requirement for landlord’s consent for thermally insulating film, water efficient shower-heads (s 64, r 26)
 - › Removal of the ‘no reason’ Notice to Vacate – making it harder to evict someone
 - › Provision for agreements in relation to solar panel installation (s 53AA)
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Solar rebates for rental properties

A \$1400 rebate with the option of a \$1400 interest free loan (reduced from \$1850).

- › Up to 670 properties benefitted at July 2020, of 1000 available
- › 1615 remaining in 'this release' at 22 February 2022

What other law is relevant to the discussion?

Climate Change Act 2017

- › Section 20 of the Victorian *Climate Change Act 2017*:
 - › The Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles.
 - › The policy objectives are set out at section 22 and include:
 - › (e) to support vulnerable communities and promote social justice and intergenerational equity.
 - › The guiding principles include the principle of equity, which is defined at section 26 as including:
 - › (b) in particular, the present generation should consider the opportunities to increase the capacities to adapt to climate change of those people most vulnerable to the potential impacts of climate change; ...
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What are some of the challenges with the current law, for renters?

- › Minimum standards:
 - › They only apply to rental agreements entered after 29 March 2021 – this excludes many social housing properties
 - › Are they sufficient? – see [live discussion](#) about air-conditioning and insulation.
 - › Are they the right vehicle? – compliance/enforcement issues
 - › Do we have sufficient evaluation mechanisms in place to monitor effectiveness?
 - › Non-mandatory rental housing upgrades (i.e. solar panels)
 - › The split-incentive challenge
 - › Rent increase risk = lower income renters are less likely to find housing they can both afford to rent and heat (or cool)
 - › Owners' corporation (strata) complexity
 - › Climate Change Act – arguably remote to renting
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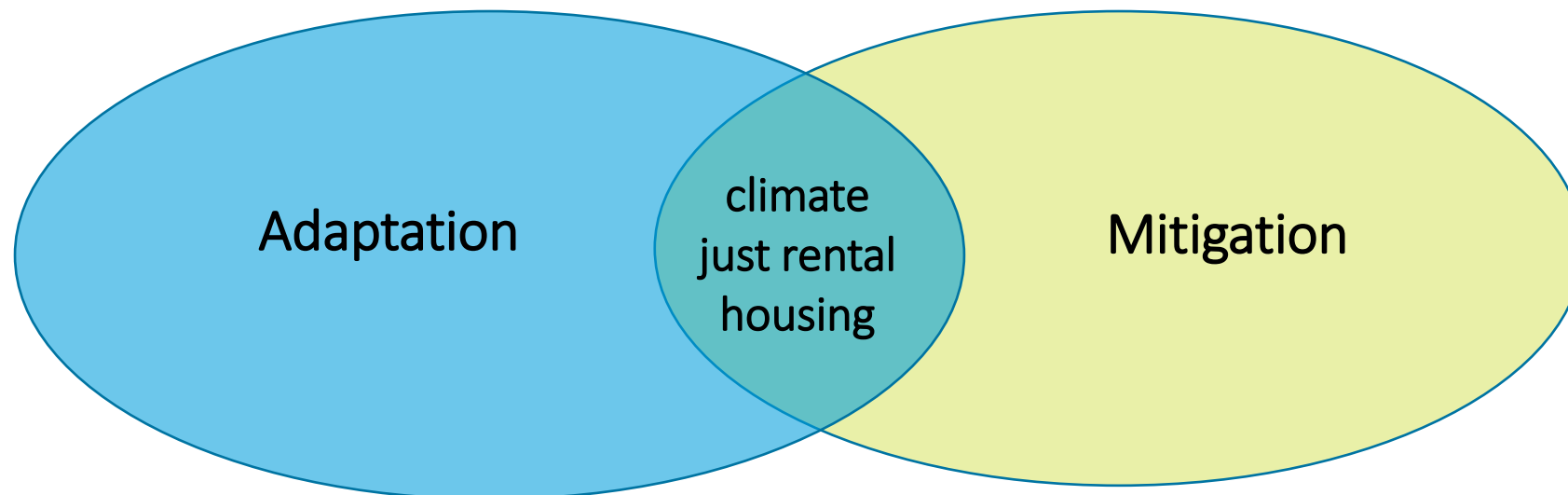
Push point – climate change litigation

Nascent climate change litigation in Australia, globally inspired

- › Increasing willingness of courts to find climate change impacts on diverse communities as a relevant consideration in decision-making: *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 (27 May 2021) (austlii.edu.au)
 - › Courts are increasingly willing to find a duty to protect against climate change: *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92
 - › There is constantly new litigation expanding the scope of these duties:
 - › *For government*: '*The Australian Climate Case*' – Federal Court class action arguing that the Federal Government has a duty of care to not harm Torres Strait Islander people through climate change (October 2021) – based on the *Dutch Urgenda class action*
 - › *And, increasingly, private entities*: *Australasian Centre for Corporate Responsibility action against Santos in the Federal Court for misleading or deceptive conduct relating to climate change under the Australian Consumer Law* (August 2021) – based on the *Dutch Milieudefensie et al v Shell* (2019) case
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What could climate just rental housing look like?

- › **Climate justice** acknowledges that climate change can have greater social, economic, health, and other impacts on communities experiencing structural disadvantage
- › climate change becomes foremost an issue of equity, fairness, and human rights
- › inequities can only be addressed through long-term mitigation and adaptation strategies
- › In other words, 'climate justice is the [substantive] fair treatment of all people in the creation of policies and projects that address climate change as well as the systems that create [it]'



How could this be implemented?

Case study: responding to extreme heat

- › Adaptation – air conditioners effectively mandated in rentals
- › Mitigation – *energy efficient* air conditioners effectively mandated in rentals *with insulation and solar panels* in rentals
- › True climate justice – *equitable access to energy efficient* air conditioners effectively mandated in rentals *with insulation and solar panels* in rentals

Questions this raises:

- › How to implement this to ensure equitable access?
 - › Who should bear the cost of upgrade and upkeep over time?
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How could this be implemented?

Looking more broadly...

- › Would enhanced minimum standards help?
 - › How to respond to the issue of split incentives, risk of increased rents, and compliance/enforcement?
 - › Registration? Regular reporting/monitoring of conditions?
 - › A right to climate safe housing?
 - › Note ACT is discussing a right to clean environment in its Human Rights Charter Legal obligations to undertake adaptation and mitigation in rental housing stock?
 - › More specific legal obligations to protect people experiencing vulnerability or disadvantage?
 - › Issues of a changing housing environment: insurance, building codes, scarcity of adequate stock
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What are the risks of inaction?

- › Public health implications of extreme heat and ‘dangerous’ housing
 - › thermal security and liabilities
 - › potential risks from excessive flooding and poor ventilation > mould
 - › Flow on impacts on mental health and relationships
 - › Excessive utility bills compounding financial insecurity
 - › Forced relocation due to climate change impacts and uninhabitable regions (bushfire, storms, floods, extreme heat) Obligations of landlords and govt when housing is damaged or declared uninhabitable.
 - › Rising insurance liabilities and building codes requirements may have flow on impacts for rental housing cost and availability/stock.
 - › Climate change impacts together with COVID-19 impacts and other external stressors such as rising property prices put pressure on rental stock (particularly regionally) which in turn increases the vulnerability of precarious communities.
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Conclusion

- › Rental housing represents an important and under-researched area in climate change adaptation
 - › Climate just rental housing must incorporate both adaptation and mitigation measures.
 - › There are risks with not ‘forward proofing’ rental regulation toward climate justice:
 - › Public health implications
 - › Forced relocation of communities,
 - › Risk of adverse impacts on housing stock/rental prices
 - › Flow-on impacts on most vulnerable communities
 - › Climate litigation risk
 - › Private rental providers, particularly those that own only one property, are the majority of rental providers in Victoria – and therefore must be part of the solution.
 - › A ‘wicked’ problem, with no one solution.
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